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ABSTRACT

Every state will soon have some negotiation law covering school employees. If negotiation is an adversary process between two powers, then there has to be a balance of power between the school board and union. Today unions have more actual and potential power than school management. Unions spend great sums of money preparing for negotiations and training negotiators. School districts also must spend money and learn to work together on the local, state, and national levels, or they will lose their rights to union whipsawing. Negotiation must be viewed as a continuous and permanent management function that requires careful advance planning. After a contract has been ratified, principals and supervisors will need inservice training on contract maintenance and labor relations. It is of prime importance that the board have a well-written contract, especially those clauses dealing with board rights, grievance procedures, and bargaining unit representation. Unionized teachers hope to take power from school boards and the citizens they represent; to protect the rights of the board, taxpayers, and students of a school district demands serious attention and determination. (Author/JG)

PREPARATION FOR BARGAINING

Negotiation and Administration of the Contract

(A Presentation by Richard L. Higginbotham,
Director of Personnel and Employee Relations,
Waterford, Michigan, School District, at the
AASA Convention in Dallas, Texas, February, 1975)

THE NEGOTIATION PROCESS

School administrators and Board members across the nation must prepare for the unionization of their employees. Because of many factors, such as the increased benefits that have been gained by school employee unionization, and the times themselves, every state will soon have some form of negotiation law covering teachers, custodians, secretaries and other school employees. At this point in time, even the United States Congress is seriously considering a Federal law for public employee bargaining.

Most administrators, in those states that now have a public employee negotiations law, will state the following as principles of negotiations: Negotiations is an adversary relationship, which results in tension, conflict and much rhetoric; it works best if both sides can win; the union, once in existence, will not wither away and each year of negotiations the union will want "more".

OUR ADVERSARIES:

If you accept the principle that negotiations is an adversary process between two powers, you also should accept the fact that there has to be a "balance of power" between the adversaries (School Board and Union). Today, our Union adversaries have more "power" and the potential of power than does the school management side. The NEA alone has a budget of approximately thirty million dollars and a membership of 1.2 million. The NEA, the American Federation of State, County and Municipal Employees and the International Association of Fire Fighters have formed a coalition to work for favorable legislation, voting power and cooperation on the local level in negotiations. The NEA also has plans to have some 1,500 to 3,000 full time labor negotiators in the U.S. within a few years.

The teacher unions expend great sums of money to achieve their negotiations goals. The American Federation of Teachers pays its President Shanker a salary of $70,000. The public education unions spent some 3.7 million dollars in the 1974 National, State and local elections and they were very successful in electing politicians favorable to their views.

In Michigan, each of our teachers pays over $150 a year to pay for a staff of some 120 full-time union negotiators, lobbyists and public relations experts. The MEA will spend over 4 million dollars this year on labor relations alone for some 80,000 teachers.

The question we should consider in reference to negotiations is

what do we have, as school management people, to combat the power of the school unions? What should we be doing on the local, state and Federal levels to prepare ourselves for negotiations with our powerful adversaries?

PREPARING FOR LOCAL NEGOTIATIONS

In 1965, when the Michigan Public Employee Negotiations Law was passed, Boards of Education were not prepared to meet the power of teacher unions. We still talked about the Professional Family relationship, as you still may be doing in your state. The employee units were ready, since the MEA had prepared and distributed to all of their locals, a model contract with ambiguous language for the purpose of taking rights away from the Boards. Boards made many mistakes the first years of negotiations because they were not prepared and they accepted a defensive role rather than an offensive one. Some school districts accepted a lot of the Association-prepared language, which limited or gave away the Board's right to operate the district.

The principle of QUID PRO QUO (when you give up something, you get something in return) was not practiced.

Today, ten years later, there are still some Boards trying to negotiate out of their contracts specific language which has seriously interfered with the management of their districts. One district has been so determined to regain its rights, that it faced its third strike within the past four years. This contract has been touted by the MEA as a model contract and the present Executive Secretary of the NEA was the teacher union negotiator in that district. By the way, he has at least five former Michigan teacher negotiators on his NEA negotiations staff. Also, the Florida, Indiana, Missouri, Oregon, Wisconsin and Kansas State Education Associations' Executive Secretaries are from Michigan. In total, I know of 23 former Michigan teacher negotiators now in other states sharing their experiences with many of you and we in Michigan are willing to give you all of them!

The point I'm trying to make is that the Union spends great sums of money on the negotiations process, in preparation for negotiations and in training personnel in negotiations. As school management representatives, we must also spend money, if we want an equalization of power between us and the unions we deal with. We must learn that school districts on a local, regional, State and National level have to work together on negotiations or we will lose our rights due to Union whip-sawing. Some of you may be skeptical that school districts can cooperate, since they are known more for their independence and support of local control. But some of us in this room know about the benefits of cooperation between school districts on a local, regional and state level.

In our County, there are 28 school districts, each with a chief negotiator, who meet together twice a month to review contract clauses, to in-service ourselves, to report on negotiations progress, to review grievances and arbitration cases and to discuss problems in labor relations. We have a Metropolitan Bureau of School Studies which has an Office of Collective Negotiations with 112 members from a six county area around Detroit. Its purpose is one of negotiations research and communications. We also have a state organization of Michigan Negotiators which works on a state level

to in-service and to effect legislation. We have found that cooperation between districts is very beneficial. We stress in-service, since there is no other way to learn about negotiations, except by experience and the mistakes of others.

If small and large school districts' managers and board members learn to share negotiations ideas, mistakes; learn to in-service each other, and learn to communicate and cooperate, they will offset the Unions' head start in this area.

Negotiations has to be viewed as a continuous, permanent and integral process, similar to any management function which requires careful advance planning. Even if your state does not have a negotiations law, you should consider preparing for the inevitable. Since you can't go to universities or colleges to receive a degree in Public Employee Labor Relations, you have to look for workshops and management negotiations clinics such as the one you are attending today, to send your management personnel to. You also should remember that many of the professors are in a union also.

When your district goes to the table, select a negotiating team representative of the various levels of management in your district. Principals should be on the team, since they will know whether a proposal is feasible and can be put into effect on their level. We can't erode the Board's authority by limiting the principal's role to that of a caretaker.

I'm disturbed by continual critical comments from Board Members or top school administrators about how their principals function. We must remember that principals were selected by us, because they got along well with students, administration and parents. They were trained by college professors who espoused the "one happy, democratic, paternalistic family" theory of school building administration. Very few, if any, principals have been trained in labor relations, conflict resolution, and management. When school management criticizes its principals, it is criticizing itself, since management selected the principal. Management has the power to correct unwanted behavior and it can provide in-service programs for its principals.

After a contract has been ratified, principals and supervisors will need in-service training on contract maintenance and labor relations. Administrators must realize that a contract is a limit on their authority and they have to work within its framework. An attorney I know describes negotiations this way: " Before negotiations, the Board had a big bundle of sticks; and each year of negotiations, it loses some of those sticks."

Since principals are the first level of management, top administration must assist principals to function in their new labor relations roles and relationships with unionized employees. The principal is the key administrator in a sound employee relations program. He is the model from which the Union and its members form their opinion of management.

Principals and other school administrators have to learn that paternalism will not work any more. Unionism makes everyone average and requires that everyone be treated the same. The contract is a binding, enforceable document that has to be complied with; management decisions must be reasonably consistent, and management has to have a uniform interpretation of contract language. If this does not happen, management can cause the erosion of its own rights.

Where a contract is silent, principals, as management, can act and let the Union react. The only limitation on their action, is having a good reason for the action, and the responsibility of explaining that reason, if asked. Management's inaction, or remaining silent on an issue, can cause labor problems, grievances and loss of rights. Principals must be educated to labor relations. This is good training, whether or not you have a union. The only method to do this is through a good management in-service program. The insecure administrator will need much more support than previously; he is isolated in the building where he daily represents the Board in confrontation with union representatives.

In protecting management rights, school administrators and the Chief Spokesman for the Board especially, must understand and be knowledgeable of the law that requires bargaining with public employees. They must be aware of what the law states are the mandatory subjects of bargaining and the permissive subjects of bargaining. It is mandatory that public employers in Michigan bargain on "wages, hours, and terms and conditions of employment." We know the definition of "wages and hours", but we run into serious difficulties in defining "terms and conditions of employment." The law in Michigan, like others, does not define the permissive and mandatory subjects of bargaining. The next step for negotiators is to find out what the State Labor Relations Board or Commission has determined to be mandatory and permissive subjects. In Michigan, there is very little guidance from the Michigan Employment Relations Commission to determine what is mandatory or permissive. This is partly because school districts have made the mistake of not taking cases to MERC for a ruling on whether an item was a permissive or mandatory subject; but instead, they have negotiated almost everything to avoid conflict.

There really are no pat answers on how to negotiate to protect management rights, but some lessons we have learned are:

1. Show "good faith" bargaining. This is required by the law anyway, and you won't get anywhere without it. Good faith bargaining does not require management to agree to a proposal or make a concession, but management has to back up its position with facts and/or logic. For example, take the demand for a class size article. Instead of saying, "No, we're not going to negotiate class size", you can agree that there may be something to the idea of a maximum class size limit, but management must be free to establish that policy since it affects many other kinds of management decisions. Also, there is no conclusive research to indicate that a limit on class size affects learning.

2. Keep the contract short by limiting the areas of negotiations by

never agreeing to anything that cannot be lived with some time in the future, and by keeping agreements to the point, without excessive verbage. Don't be quick to buy labor peace at any price. Don't negotiate the format of individual contracts or other administrative forms; don't include references to other documents in the contract, such as the teachers' Code of Ethics. The Code of Ethics is theirs to change any time. It is not a management Code. If you did state, "We accept the teachers' Code of Ethics as an appropriate guide to teacher behavior", you would be buying, sight unseen, some statements that would limit your management rights. It has one section dealing with commitment to the student and one to the Community, both of which the Union does not negotiate for. Under "commitment to the Community" is the statement, "Evaluate through appropriate professional procedure conditions within a district or institution of learning, make known serious deficiencies and take any action deemed necessary and proper." The action deemed necessary could mean "to strike" against the Board.

3. You can't negotiate professionalism and philosophy. Stay away from all philosophical type statements which usually have vague and undefined language. Many union grievances are based on such kinds of clauses since they are open to many kinds of interpretations, usually putting the Board at a disadvantage.

It is of prime importance that the Board have a well written contract, especially such clauses dealing with Board's Rights, the Grievance Procedure, and Recognition of the bargaining unit. The Board's Rights Clause is the skeleton of the contract for management. All other specific articles in the contract take away from the rights of the Board. The Board's Rights clause, in effect, reserves all rights to the Board, except those specifically given away to the Union in the contract and by practice. At the present point in time, because of a changing attitude of courts, arbitrators and governmental labor agencies, the Board's Rights Clause must be more than a statement that all rights not given away are retained by the Board. It is wise to list as many management rights as you can without being too general or too specific. Recent rulings indicate that management will be forced to negotiate what has been thought to be traditionally reserved to management, unless it has a strong management rights clause spelling out its rights.

The employee representatives usually propose a vague and general Board's Rights Clause, which, in effect, doesn't establish management rights. It usually states in general terms that the Board has the responsibility to manage the school district, but it does not specifically state agreement that the Board has the right to manage and direct the School District. The Board will want a clause that states it has the right to operate its business, determine curriculum, textbooks, school facilities, number and kinds of employees and the management organization.

An example of a good management rights clause is Section 7 of President Kennedy's Executive Order No. 10988. It allows management to retain its right to direct its employees; to hire, promote, transfer, assign, and retain; to suspend, demote, discharge or take disciplinary action; to lay off; to maintain efficiency; to determine the methods, means and personnel needed to conduct its operation.

The purpose of a Grievance Procedure is to set up an orderly process for solving complaints or disputes. It should not be overly restrictive or too permissive. All grievances should be defined as a violation of a contract clause. It is very important that Boards insist upon this, and not include Board policies or State Laws as being grievable.

Most Union Grievance Proposals either have no definite time limits as to when a person can file a grievance, or have a long period of time for filing. A Board must insist on a specific time for the filing of a grievance (such as five days from the incident) or it will be plagued by grievances from a month to a year in the past.

Another danger in Union-proposed grievance procedures is that some allow Union officials, outsiders and/or insiders a great amount of time, usually paid for by the Board, for the investigation, discussion and review of grievances. There have to be reasonable limits put on the Union for investigation and soliciation of grievances. It is also reasonable to expect that the Union representatives will not be able to solicit grievances and will not receive pay from the Board to handle grievances.

Boards should not permit employees to grieve just anything. A tenure teacher should not be able to grieve being fired, especially if there already is a State provision (Tenure Law) for redress. It is also recognized that one of the basic rights of management is the right to fire a probationary employee without redress to the grievance procedure, except in the case where one is fired for Union activity. The discipline of strikers, the terms of an insurance policy, class sizes and management rights are also examples of non-grievable matters. Boards should not let the Union write the grievance procedure for it is one of the items which, if poorly written, can cause havoc in your district and weaken the rights of management.

If a district has to give arbitration as the last step of the grievance procedure, there are several ways to do this. Arbitration can be permissive (where either party can reject taking a grievance to arbitration) or mandatory (where the grievance can be taken to arbitration without permission of the other party.) Mandatory arbitration can be of two types: Advisory, (where the arbitrator's decision is not binding on the parties), or Binding: (where the decision of the arbitrator is final and has to be followed.)

If a Board gives Arbitration as the final and binding step of the grievance procedure, there must be limits on what is arbitrable and on the powers of the arbitrator. In those contracts, mainly with teachers, which have a lot of what I call "Philosophical garbage", composed of language that is vague or undefined, the Board should never agree to Arbitration as the final step of the grievance procedure. The language of an arbitration clause should be worded so that the arbitrator cannot have the power to add to, subtract from, disregard, alter, or modify any of the terms of the contract. He should not have the power to establish salary scales, to change any practice, policy or rule of the Board; to rule on the termination of any probationary employee or on a written evaluation of an employee. His power should be limited to deciding whether the Board violated the express articles or sections of the contract. The Board negotiator's

responsibility is to see that the contract is well written, has a strong management rights clause, and covers just mandatory subjects of bargaining.

Another important contract area for consideration is the Recognition Clause, which defines the makeup of the bargaining unit. All recognition clauses should be of an "inclusion" rather than "exclusion" type, (as is usually proposed by the bargaining unit.) An inclusion clause would define the bargaining unit by listing all the types of teachers in the unit (teachers K - 12, counselors, etc.) The unit should not be defined as "all professional personnel with the exclusion of the Superintendent, principals, and so on." This type of clause can cause problems when the Board creates a new administration position. The administration claims it is an administrative position, but the bargaining unit can make a case for it not being an administrative position, since it is not excluded from the definition of the bargaining unit. The bargaining unit with the exclusion language can hamper the Board's right to hire administrators or cause the Board to negotiate about new positions.

When the unit is defined, don't allow the bargaining unit to represent more than those in that unit. For example, if it is a teacher unit, don't allow the bargaining unit to make proposals pertaining to administrators, students, other employees, substitutes, paraprofessionals, or parents.

Goals of Unionized Teachers

The main goals of the unionized teacher can be classified under three headings: MORE power, MORE Money and MORE time away from classroom teaching.

The unionized teachers hope to take power from the Boards of Education and the citizens they represent. The Unions, by gaining more power from the Boards, in the form of management rights, may be causing their own demise. With power, in the form of management rights, comes responsibility. If the union becomes management, whom does it unionize against?

The MEA in Michigan has management functions and negotiates with its unionized employees. This year, the Uniserv bargaining unit went on strike against the MEA Board because it wouldn't give in on wages and hours.

If the teachers' union gets power away from Boards and Administration, then it also has power to get other things it wants; namely, money and fringes.

If you pick up a few contracts in Michigan and some other states, you find the following have been negotiated: more money, larger increments, longevity, payment for in-service, payment for substituting during conference hours, increased pay for summer school and adult education teaching, expanding area of extra-curricular for pay, a cut number of students in a class, more preparation time, a reduction in the time specified to be at work, and time specified to leave work, as well as

no recess or noon duty, more leaves of absence with pay and without pay, such as sick leave, personal leave, emergency leave, funeral leave, professional leave, sabbatical leave, union days, religious holidays and maternity/paternity leave; shorter work day and work year; no extra-curricular unless volunteered for; less frequent faculty meetings for less time; fewer classes and class preparation; early retirement; inclement weather days, and the right to exclude students.

The list of items goes on and on because the union has to keep in power. It has to devise new and better benefits each year. You can't pacify it by giving it everything it wants; you have to negotiate and make the union feel it has won a victory.

Some of you may be wondering how the unions get their power. They can gain their power by negotiating such clauses with you as "maintenance of standards" and "past practice" clauses which mean you can't make any changes unless you negotiate with the union. You can give the union power by giving it its transfer clauses, the right to evaluate its own, plus your administrators, by giving it the control over who is fired, promoted and hired.

The unions can gain power also be getting negotiations laws in every State, or by a Federal law, which it is trying to do now.

It can control also by getting Tenure laws passed, by gaining the right to strike, as in Pennsylvania, Vermont, and Hawaii; by controlling certification of teachers and student teacher programs.

The union gains power through money. This is why it promotes "Agency Shop" clauses which make the non-payment of dues the most important reason for dismissal of a teacher. The unions use their money to hire and train full-time union leaders and to elect legislators and local Board Members favorable to their point of view.

This topic is a difficult one to discuss in such a short time period, since there are so many facets involved in the process of protecting management rights through negotiations and administration. What I have tried to convey to you is that the protection of management rights involves more than just negotiating the specific language of the contract. The whole process demands serious attention to such variables as the abilities of the chief negotiator, the cooperation between the Board and all administration within a system, the cooperation between districts on a local, state and national level, and the recognition of the importance of the negotiations process which, in effect, determines the whole operational framework of a school district. To protect the rights of the Board, the taxpayers and the students served by a district, demands serious attention and determination. I wish all of you the best in such an endeavor.